Supreme Court of the United States

OCTOBER TERM, 1962

No. 119

WILLIAM J. MURRAY, III, ETC., ET AL.,
Petitioners,
v.
JOHN N. CURLETT, PRESIDENT, ET AL., INDIVIDUALLY AND CONSTITUTING THE BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY,
Respondents.

No. 142

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, ET AL.,
Appellants,
v.
EDWARD LEWIS SCHEMPP, ET AL.,
Appellees.

BRIEF OF THE AMERICAN HUMANIST ASSOCIATION, AS *AMICUS CURIAE*, AND MOTION FOR LEAVE TO FILE SAME

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MOTION OF THE AMERICAN HUMANIST ASSOCIATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

The undersigned, as counsel herein for The American Humanist Association, respectfully moves this Court for leave to file a brief, as *amicus curiae*, in both of the above cases.

The American Humanist Association is a non-profit, non-political organization organized under the Laws of the State of Illinois in 1943. Its headquarters are in Yellow Springs, Ohio. Its predecessor was founded in 1928.

It is the principal organization in the United States devoted to Humanism as a specific movement of life and thought. As an approach to living, as a philosophy and a religion, Humanism is free from any belief in the supernatural and dedicates itself to the happiness of humanity on this earth through reliance on intelligence and the scientific method, democracy and social sympathy.

It publishes a magazine called "*The Humanist*". Its program is carried out through nearly 100 local chapters and affiliated groups. It has a nation-wide membership. It is linked to other groups in 21 other countries through "The International Humanist and Ethical Union." Its membership is drawn from members of liberal churches, including Unitarian and Universalist, Ethical Societies, and secular groups.

It is not attempting to form another church but to supplement and relate the Humanists in various churches and to join them with secularists in common study and fellowship.

In 1933 "A Humanist Manifesto" was issued by 34 distinguished persons, including John Dewey, Robert Morss Lovett, John Herman Randall, Jr. and Charles Francis Potter, most of whom considered themselves religious in a non-theological sense. Religion to them meant the group quest for good life and the pursuit of the ideal, but unlike traditional theistic religions that ideal was grounded in nature rather than in the supernatural. Humanists endeavor to keep the human spirit free from binding dogmas

and creeds and to search for truths rather than "The Truth".

It firmly believes in the fundamental American doctrine of complete separation between church and state and that this principle must be maintained in its broadest aspects.

It regards the public school as one of the most democratic American civil institutions and that its idea of secular education should not be compromised by using it as an agency for religious activities or instruction. For years it has opposed Bible reading, prayers and other religious services, ceremonies and instruction in public schools. It regards such practices as unconstitutional.

It is particularly concerned, in this important case, because the legislative acts and practices complained of prefer religions that are based on a belief in God as against religions founded on different beliefs.

In *Fellowship of Humanity* v. *County of Alameda*, 153 Cal. App. 2d 673, 315 P. 2d 394, the Court held that an affiliate of The American Humanist Association was a religious organization and entitled to tax exemption as such, and therein the Court construed "religion" to include theistic as well as non-theistic religious groups.

It is because of the importance of this case to Humanists throughout this country, and the effect it undoubtedly will have internationally, that permission to file the accompanying *amicus curiae* brief is requested.

The attorneys for petitioners in No. 119 and for appellees in No. 142 have consented to the filing of this brief. The attorneys representing respondents in No. 119 and appellants in No. 142 have neither consented or objected to its filing.

The undersigned filed the *amicus curiae* brief on behalf of American Civil Liberties Union in *Doremus* v. *Board*

of Education, 342 U. S. 429 (1952), involving the same questions.

Respectfully submitted,

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Supreme Court of the United States

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No. 119

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BRIEF OF THE AMERICAN HUMANIST ASSOCIATION, AS *AMICUS CURIAE*

Interest of the *Amicus*

The interest of The American Humanist Association is set forth in the accompanying motion.

Brief Statement of the Cases

1. *Murray v. Curlett, No. 119*

Article VI, Section 6 of the Rules of the Board of School Commissioners of Baltimore City, Maryland, provides (R. 4, 27):

> "Section 6—Opening Exercises. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should [also] be held as a part of the general opening exercise of the school or class. *Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon written request of his parent or guardian.*" (Italics added.)

The original Rule was adopted in 1905. Following a protest by petitioners (R. 3, 4) and a ruling (R. 18-25), the Board, on November 17, 1960 amended the Rule by adding the last sentence, italicized above.

The Rule has been applied in all public schools in Baltimore. The required practice thereunder has been to read from the King James version of the Holy Bible and to recite the Lord's Prayer, as part of a daily opening exercise and ceremony (R. 4).

One petitioner, a minor, is a student at a Baltimore Junior High School, wherein such practices occur. The other petitioner is his mother, a local resident and taxpayer. Both are atheists (R. 4, 5).

Before amendment of the Rule, the student petitioner was compelled, contrary to his conscience, to attend the

opening exercises. Since then he has been excused on his mother's request (R. 4).

Petitioners brought this action for a writ of mandamus "to rescind and cancel the aforesaid Rule and to cause said teachers in Baltimore City to discontinue the practice and exercise". The facts stated in their petition (R. 3-7) are deemed true (R. 8, 37). Petitioners' claim that said Rule, inherently and as practiced, violates their freedom of religion under the First and Fourteenth Amendments of the United States Constitution and the principle of separation between church and state contained therein (R. 5).

On demurrer, the petition was dismissed by the Superior Court of Baltimore City (R. 8-17). The Maryland Court of Appeals affirmed, by a 4 to 3 decision (R. 26-46).

2. *School District of Abington Township, Pennsylvania* v. *Schempp*, No. 142

Section 1516 of the Pennsylvania Public School Act of March 10, 1949, as amended December 17, 1959, provides (R. 199-200; 24 P.S. §§15-16, Supp. 1960):

> "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

The action was started under the original statute (R. 1-3). The amendment was effected during pendency of the action (R. 228-9). The amended statute is the subject of petitioners' supplemental complaint (R. 199-200, 229), by which, also, one of the original plaintiffs was eliminated because of graduation.

Present plaintiffs-appellees are two Schempp minor children now students at Huntington Senior High School, a public school in the School District of Abington County, Pennsylvania, and the Schempp parents, residents of said Township (R. 1, 220-1).

All appellees are Unitarians (R. 2).

Action was brought to enjoin the enforcement of said statute as amended and to declare, as unconstitutional, the statute and "the practice of causing the Holy Bible to be read and of directing the saying of the Lord's Prayer at the Abington Township Senior High School * * * and to enjoin and declare unconstitutional, the expenditure of funds for the purchase of Holy Bibles" (R. 5, 6).

The practice, under the amended statute, is for high school pupils to report to their "homerooms" at 8:15 A.M.; shortly thereafter, with each pupil seated "at attention", the Bible reading starts and consists of the reading, without comment, over a loud speaker, of at least ten verses of the King James version of the Bible; then the children stand and repeat, with the public address leading them, the Lord's Prayer; still standing the children then give the "Flag Salute"; they then sit down; announcements are then made, whereupon the children disperse to their first classes of the day (R. 217-218, 220-221, 230-231).

The Schempp parents decided not to request that their children be excused from the program for various reasons. They thought that their children would be labeled "odd balls" before their teachers and classmates; the children's classmates would think of them as "atheists"; because the events of the morning exercises followed in rapid succession, the excusing of their children would probably cause them to miss the announcements, so important to the children; and they did not want the children to have to stand

in the hall outside of their homerooms, with the resultant imputation of punishment for bad conduct (R. 213-219).

The case was tried on the original complaint and statute. A three-judge Federal District Court entered judgment declaring the statute unconstitutional and enjoining its enforcement (D.C. 1959, 177 F. Supp. 398). While appeal to this Court was pending, the statute was amended. This Court then vacated the judgment and remanded the case for such further proceedings in light of the amended statute (364 U. S. 298).

Following filing of a supplemental complaint (R. 199-203) and further testimony thereunder (R. 210-28); a three-man District Court rendered a decision (R. 228-235) and entered a judgment (R. 236-37) declaring the amended statute and the practice thereunder to be in violation of the First and Fourteenth Amendments of the United States Constitution "in that it provides for an establishment of religion" (R. 235), and enjoining the enforcement thereof (R. 236).

The Question Presented

The question is whether the Pennsylvania statute and the Baltimore City Rule and the respective practices thereunder, of reading a chapter or at least ten verses from the Holy Bible, without comment, and reciting the Lord's Prayer as part of the opening exercises conducted by the school authorities at the commencement of each school day in the public schools in Pennsylvania and Baltimore City, constitute a violation of the First and Fourteenth Amendments of the United States Constitution.

ARGUMENT

POINT I

The Pennsylvania statute and the Baltimore City Rule and the respective practices thereunder, in the public schools of Pennsylvania and Baltimore City, of reading a chapter or at least ten verses of the Holy Bible, without comment, and of reciting the Lord's Prayer are religious, sectarian exercises and instruction and violate the First and Fourteenth Amendments of the United States Constitution.

A. The basic applicable constitutional provisions

The First Amendment of the Federal Constitution provides in part:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. * * *"

Under the due process clause of the Fourteenth Amendment and recent Supreme Court decisions, the "establishment" clause and "free exercise" clauses of the First Amendment are applicable to States and subdivisions thereof. Neither Congress, nor any State, or any agency, subdivision or official of the Federal or State Governments, including boards of education, can violate them. *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943); *Board of Education* v. *Barnette*, 319 U. S. 624 (1943); *Everson* v. *Board of Education*, 330 U. S. 1 (1947); *McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *McGowan* v. *Maryland*, 366 U. S. 420 (1961).

The minimal meaning of the establishment clause has been stated, and reaffirmed, in recent decisions of this Court (*Everson* v. *Board of Education*, *supra*; *McCollum* v. *Board of Education*, *supra*; *Zorach* v. *Clauson*, 343 U. S. 306 (1952); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961); *McGowan* v. *Maryland*, *supra*) as follows:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organization or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"

In *Everson*, all members of this Court agreed to this interpretation, differing only as to its applicability therein. In *McCollum*, this Court repeated this statement and specifically declined to repudiate it as mere "dicta". In *Zorach*, this Court said "We follow the *McCollum* case." The quoted statement was reaffirmed in 1961 in the *Torcaso* and *McGowan* cases, *supra*, with an observation that it had not been repudiated, even "in part", in *Zorach*, as some had contended.

Some additional rules of law, applicable here, have been stated in those cases.

A state's tax-supported, public school buildings and system may not be used to disseminate religious doctrines or to aid any or all religious faiths. Nor may a state aid sectarian groups in providing pupils for their religious classes through the use of the state's compulsory public school machinery (*McCollum* case).

Government may not finance religious groups nor undertake religious instruction, nor blend secular and sectarian education, nor use secular institutions to force one or some religion on any person (*Zorach* case).

Neither the federal nor a state government may require a belief in God as qualification for public office or impose legal requirements which aid all religions as against non-believers or aid those religions believing in God as against those religions founded on different beliefs (*Torcaso* case).

Government, state or federal, is without power to prescribe by law any form of prayer to be used as an official prayer in carrying on any program of governmentally sponsored religious activities. Prayer is a religious activity and a state education department may not prescribe the use in its public schools of such a prayer, even if regarded by some as 'non-denominational' (*Engel* case).

B. Public schools are civil institutions

The public schools of America, including those in Baltimore City and Pennsylvania, are temporal, civil institutions, set up and governed by civil authority. The principle is implicit in all public school systems that they must be under public control and secular in education.

City of New Haven v. *Town of Torrington*, 132 Conn. 194.

As stated in *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 349 (1910):

> "The public school is supported by the taxes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes. The truths of the Bible are the truths of religion, which do not come within the province of the public school."

As the Court said in the *Barnett* case, *supra*, at page 637:

> "Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party or faction."

It has been established by many decisions that the public school system is a state institution and a department of the civil government. See 47 Am. Jur., p. 300, 6; 78 C.J.S. 13, p. 625; 56 C.J., p. 178; and cases cited.

The fusion or commingling of secular and religious activities by government, through its instrumentalities, especially its public schools, must be avoided. See *Zorach* v. *Clauson*, 343 U. S. 306, 314 (1952); and *Everson*, *supra*, majority and minority opinions.

It was early recognized that if education was to be religious, it must be carried on with religious groups and without the support of the state; and that in an educational system supported by the state, education must be secular. Separation in education was necessary to save

the public schools from being rent by religious conflicts. Separation is a requirement to abstain from fusing the functions of government and of religion. See *McCollum v. Board of Education*, 333 U. S. 203, 215-16, 231, concurring opinion, Frankfurter, J.

As Mr. Justice Rutledge pointed out in *Everson, supra*, at pp. 44, 63:

> "Two great drives are constantly in motion to abridge, in the name of education, the complete division of religious and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools."

C. Reading the Bible and reciting the Lord's Prayer in these public schools is a religious ceremony or exercise, and a sectarian religious exercise

Prayer is a religious activity. It is a "solemn avowal of divine faith and supplication for the blessings of the Almighty". *Engel v. Vitale*, 370 U. S. 421, 424 (1962). "Prayer is always worship". *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 339 (1910).

The highest courts of a number of States have recognized that Bible reading, with or without comment, is religious instruction, a religious act, and religious worship. See, for example, *Peo. ex rel. Ring v. Board of Education*, 245 Ill. 334; 92 N. E. (2) 251 (1910); *State ex rel. Weiss v. District Board*, 76 Wisc. 177, 194; 44 N. W. 967 (1890); *State ex rel. Finger v. Weedman*, 55 So. Dak. 343, 226 N. W. 348 (1929); *Herold v. Parish Board*, 136 La. 1034; 68 So. 116 (1915); *State ex rel. Freeman v. Scheve*, 65 Neb. 853, 871, 880 (1902).

That recitation of the Lord's Prayer in a school assembly is a religious act or exercise is obvious. The Lord's

Prayer to "Our Father" is an act of worship and a petition to God. It is not a secular act or exercise.

While there is conflict in the state judicial decisions as to whether Bible reading is sectarian instruction, it seems clear, from an objective point of view, that it must be so regarded, as held in the state cases above cited.

There are different versions of the Bible, such as the Douay (Catholic) version and the King James (Protestant) version and one of these must be used in such reading. To the Catholic, the King James version is sectarian; and to the Protestant, the Douay version is sectarian. To Jews and other non-Christians, the Christian Bible, of whatever version, is sectarian, since it includes the New Testament. The Jews and other non-Christians do not recognize the New Testament to be the word of God or that Jesus Christ is divine. To Christians, the New Testament contains the highest and latest revelation of God's word and it is a discrimination against Christians not to read the New Testament, just as it would be a discrimination against Jews and other non-Christians to read the New Testament. In Louisiana and Illinois the courts have decided that the reading of the New Testament violates the religious liberty of the Jews. *Herold* v. *Parish Board, supra; Peo. ex rel. Ring* v. *Board of Education, supra;* Cf. *Tudor* v. *Board of Education of Rutherford,* 14 N. J. 31 (1953) in which the "Gideon Bible", composed of the New Testament (King James) and the Books of Psalms and Proverbs from the Old Testament, was held to be a sectarian book. See also *The Wall of Separation between Church and State,* Moehlman, Beacon Press (1951) at p. 153.

The Lord's Prayer is a sectarian prayer to those, such as the Jews, who do not recognize Jesus Christ as their

Lord. The King James version of that prayer is objectionable to Catholics because of the concluding sentence which reads "For Thine is the Kingdom, the Power and the Glory, forever".

The practice of Bible reading cannot be justified, constitutionally, on the ground that the Bible is accepted, in whole or in part, by the three great religious groups, Jewish, Roman Catholic and Protestant, or that the nation, or any state or city therein, is predominantly Christian or Protestant.* This also ignores the fact that the large number of the Protestant sects and the differences between them have been caused primarily because of basic differences in the interpretation of the Bible.

The United States is a cosmopolitan nation made up of almost every conceivable religious preference, especially since the addition of Hawaii and Alaska. There are almost 300 denominations, alone, listed in the Year Book of American Churches in 1958, at p. 257, et seq. *Braunfeld* v. *Brown*, 366 U. S. 599, 606.

These cases do not involve the reading or studying of the Bible as literature or history, or incidental allusions to the Bible or religion in the course of secular studies. Passages to be read are not selected to that end cf. Jackson, J., *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 232-6. They involve the reading of a chapter or 10 or more verses of the "Holy Bible" as the word of God, in a religious exercise or ceremony conducted in an

* In this connection it is significant that in 1797 the United States entered into a treaty with Tripoli in which it was declared that "As the government of the United States is not, in any sense, founded on the Christian religion, * * * it is declared * * * that no pretext arising from religious opinion shall ever produce an interruption of the harmony existing between the two countries." Today this concept is important because of the widespread international relations of the present day United States.

atmosphere of devotion and solemnity in a school assemblage. The reading is part of "morning devotions" (R. 23, No. 142). Comment is expressly enjoined.

Being thus read as the Holy Word, and without comment, no opportunity is afforded to anyone to explain or to interpret the meaning of the passages read, or to discuss the source, history, background and context of such passages or the books of the Bible in which they occur.

It is not possible to subject such readings to the intellectual process, or to the tests of modern Biblical research; or to permit any rationalization thereof in relation to other studies in the public schools as, for example, the story of creation as set forth in Genesis in relation to modern science, astronomy, evolution, biology, archaeology, geology or anthropology.

Of course, if such comments were permitted, they might well offend the religious sensibilities of some pupils or their parents, or raise more sectarian issues. But, without such comments or discussion, the whole atmosphere in which the reading takes place is one of religious awe, worship and ceremony.

D. These legislative acts and practices aid one or more religions and prefer one or more religions over other religions

The Lord's Prayer is a Christian prayer. Its use favors Christians over non-Christians and religious belief over non-religious belief. One version of the Lord's Prayer favors Protestants over Catholics, and the other version favors Catholics over Protestants. The statute and rule in question prescribe the use of the "Holy Bible". That is a designation by Christians of a book which contains the Old Testament and the New Testament. Only part of the Old Testament of this "Holy Bible" contains the books

which comprise the Holy Scriptures of the Jews. The New Testament part of the Holy Bible is objectionable and sectarian to the Jews.

The Holy Bible is regarded by Christians as the "Word of God". It is not so regarded by other religious groups.

There are various versions of the "Holy Bible", the principal ones being the King James (Protestant) version, and the Douay (Roman Catholic) version. These versions differ materially in their contents and in texts. The King James version excludes the Books of Judath, Tobias and Baruch, and the two Books of Maccabees, which are included in the Douay version.

Differences in these versions and in other versions and translations of the Bible have caused major religious controversies.

Many Protestant sects have based their peculiar form of worship or church government on the emphasis or interpretation which they give to particular parts or verses of the Bible.

It appears from the record that the King James version of the Bible was used in the Pennsylvania and Baltimore City schools. This prefers Protestants over Roman Catholics and Jews. The use of the "Holy Bible", in any version, prefers the Judeo-Christian religions over the non-Judeo-Christian religions. Manifestly, verses or chapters could be selected for reading which would be objectionable to Protestants, or to Roman Catholics or to Jews, as well as to children of other religious beliefs or no beliefs.

If the Holy Bible and Lord's Prayer can be the subject of religious exercises in the public schools, there is no reason why the sacred books of other religions should not, likewise, be used in the public schools. For instance, there is no reason why the Mormons (Latter Day Saints)

should not insist that the Book of Mormon, which they regard as inspired by God, be read in the public schools; or why Christian Scientists should not insist that Mary Baker Eddy's "Science and Health with Key to the Scriptures", which they regard as inspired, be read; or why Swedenborgians (New Church) cannot insist upon the readings of writings of Emanuel Swedenborg, such as "Arcana Celestia" or "Heaven and Hell", which they regard as inspired; or why Spiritualists cannot insist upon the reading of some of the messages which they regard as God given or inspired; or why followers of Eastern religions, of which there are many in this country, cannot require the reading of the holy books of the East, such of Confuscianist, Taoist, Buddhist, Hindu, Zoroastrian and Mohammedan Scriptures. (See the "Bible of the World", the Viking Press 1939). There is also no reason why the Humanists, Ethical Culturists or Atheists should not request reading of their tracts and literature in the public schools.

E. These legislative acts and practices aid all religions against non-believers and aid those religions based on a belief in God

The reading of the Holy Bible in the King James, Douay or other version and the recitation of the Lord's Prayer presupposes a religious belief and a religion based on a belief in God.

The Lord's Prayer is addressed to "Our Father", or "God". The "Holy Bible" is regarded by Christians as the "Word of God". It is read to the school children in these cases as "God's Word" and with the reverence, awe and authority that the words of God should carry.

Such exercises manifestly aid religion in general and one or more particular religions, in relation to non-

believers. They also prefer theistic religions over non-theistic religions.

Neither a State nor the Federal Government can constitutionally pass laws or impose requirements, which aid all religions as against non-believers, or aid those religions based on a belief in God as against those religions founded on different beliefs. *Everson* v. *Board of Education*, 330 U. S. 1 (1947); *McCollum* v. *Board of Education*, 333 U. S. 203 (1948); *Torcaso* v. *Watkins*, 367 U. S. 488 (1961).

As was pointed out in the *Torcaso* case, among the religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture and *Secular Humanism*. Cf. *Washington Ethical Society* v. *District of Columbia*, 101 U. S. App. D. C. 371, 249 F. 2d 127; *Fellowship of Humanity* v. *County of Alameda*, 153 Cal. App. 2d 673, 315 P. 2d 394. See, also, Prof. Cahn's recent article on "Government and Prayer", New York University Law Review, Vol. 37, No. 6, pp. 981, 993-4 (Dec. 1962) where reference is made not only to various non-theistic religions but, also, to polytheistic religions and pan-theistic religions.

F. Government, constitutionally, cannot finance such religious exercises or use public funds or public property to aid and support such religious exercises

Here, public property and facilities are being used to aid the religious exercises. They are conducted in class rooms of the public schools and, in one case, over the school's public address system. The State, or its agency, the School District, employs and pays the salaries of the personnel necessarily used in the conduct of these reli-

gious exercises. It maintains the schools, class rooms and other facilities necessary in carrying out those exercises.

In the *Schempp* case, at least, the Township purchases with public funds and issues to its teachers in the schools, copies of the King James version of the Bible for use in those exercises (R. 126-8).

The daily exercises consist of the reading of a whole chapter, or at least of ten verses, of the Bible. There is no limitation on the number of verses or on the length of the chapter which may be read. Manifestly, such daily Bible readings, together with the recitation of the Lord's Prayer, consume an appreciable amount of school time, and of the time of the instructional and supervisory school personnel.

Moreover, the whole weight, prestige, authority, judicial sanction and coercive force of the civil government is put behind these practices.

That is not separation of church and state.

These practices violate the rule of law in the *Everson* and *McCollum* and other cases that "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

They also violate the rule of the *Zorach* case that Government may not finance religious groups or undertake religious instruction or blend secular or sectarian education.

These practices, also, are beyond all question "a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith". Not only are the State's tax-supported public school buildings

used for the dissemination of religious doctrines, but the State's compulsory education system assists and is integrated with the program of religious instruction. Such practices were condemned in the *McCollum* case. See, also, Justice Douglas' concurring opinion in *Engel* v. *Vitale*, 370 U. S. 421, 441-4.

G. No hostility to religion or religious teaching would be involved in requiring the discontinuance of such practices.

It is often argued that this Court will be showing hostility to religion if it disapproved such practices. This argument was fully answered by the Court in the *McCollum* case, 333 U. S. 203 (1048) at pages 211-212.

H. A complete separation between the State and religion must be maintained

This Court has repeatedly said that the establishment of religion clause erected a wall of separation between Church and State in this country which must be kept high and impregnable (*Everson* and *McCollum* cases, *supra*), and, "We have staked the very existence of our country on the faith that complete separation between the State and religion is best for the State and best for religion (*Torcaso* and *McCollum* cases, *supra*).

Madison was fully aware of what he was doing when he caused this absolute prohibition to be inserted in the Federal Bill of Rights (New York University Law Review, Vol. 36, No. 7, Nov. 1961, article by Cahn, *supra*, and authorities cited there). In his "Memorial and Remonstrance" he warned against the first, and even any little, evasions of the principle. Jefferson gave a similar warning: "Besides, the spirit of the times may alter, will

alter. Our rules will become corrupt, our people careless. * * * It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united." (Jefferson, "Notes on Virginia" (1782); Padover "The Complete Jefferson" at p. 676.)

The legislative acts and practices involved in this action breach that wall of separation. Exceptions to, and expedient evasions of, the principle will only lead to more evasions and exceptions and, eventually, to the undermining of the constitutional mandate. Separation means separation, not something less—a "wall of separation", not a fine line easily overstepped (*McCollum, supra*, Frankfurter, J., opinion at p. 231).

I. The constitutional defects in the statutes and practices are not cured by provisions allowing students to be excused, on request, from such exercises.

Both the Baltimore City Rule and the Pennsylvania statute were amended to provide that any child might be excused from such exercises by written request of his parent. These amendments did not cure the constitutional defects.

The fact that some pupils may, upon the request of their parents be excused from participating in, or attending, these exercises, does not free the programs from the limitations of the establishment clause of the First Amendment. *Engel v. Vitale*, 370 U. S. 421, 435 (1952); *McCollum v. Board of Education*, 333 U. S. 203 (1948) and the concurring opinion of Mr. Justice Frankfurter at page 227; *Engel v. Vitale*, 370 U. S. 421, 423-4 (1952) and Footnote 2.

In several State cases, it has been held that provision for the excusing of a pupil, upon request, from participation in such exercises does not cure the constitutional defects. See *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334 (1910); *Weiss* v. *District Board*, 76 Wisc. 177 (1890); *Herold* v. *Parish Board*, 136 La. 1034, 68 So. 116 (1915); *Knoulton* v. *Baumhover*, 182 Iowa 691; 166 N. W. 202 (1918); *Hartst* v. *Hoegn*, 349 Mo. 808; 163 S. W. (2) 609 (1941). See also able dissenting opinions in *Wilkerson, et al.* v. *City of Rome, et al.*, 152 Ga. 762, 784-5 (1921); *Kaplan* v. *Independent School Dist.*, 171 Minn. 142, 155-6 (1927).

POINT II

The attempts to force Bible reading and prayers into the public schools have created in the States many years of bitter divisions and strife. The state cases illustrate the need and reason for a strict separation of state and religion in the area of the public schools.

The number of cases that have arisen in the States over the issue of Bible reading and prayer in the public schools indicate the strife and divisiveness that such practices cause. Most of these cases have been brought by Catholics, some by Jews, each representing a local minority religious group. Some dominant Protestant groups, in encouraging these practices, have seemingly failed to appreciate the position of minority Protestant sects, Catholics, Jews and other non-Christians, non-theists and non-believers, all of whom are required to pay taxes and children of whom attend the public schools. Their attitude might well be different if, by reason of a shift of population, such religious exercises and instruc-

tion in public schools were to consist of prayers and readings characteristic of the Catholic or Jewish faiths or of other religious groups.

Reference will be made only to a few of these cases which illustrate why it is of vital importance that the principle of separation of church and state be applied and maintained, strictly, in the field of free, tax-supported public school education.

In *Peo. ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 92 N. E. 251 (1910), parents of children, Roman Catholics, sought mandamus to prevent the reading of the King James version of the Bible and the repetition of the Lord's Prayer in the public schools. They alleged that their Church believes the King James version to be incorrect and incomplete—and disapproves of its being read as a devotional exercise; and that such practice violated their rights under the State and Federal constitutions.

In one of the most carefully written and learned opinions on the subject, the Illinois Supreme Court, in holding such exercises to be unconstitutional, stated, *inter alia*, that they constituted "worship"; that "prayer is always worship"; that the Bible is a sectarian book and reading it constitutes religious instruction. It also held that the exclusion of a pupil from these exercises did not cure the situation but rather caused discrimination and divisiveness and proved that the exercises were sectarian and forbidden by the Constitution.

To the same general effect, also: *State ex rel. Weiss* v. *District Board*, 76 Wisc. 177, 44 N.W. 967 (1890); *Herold* v. *Parish Board*, 136 La. 1034, 68 So. 116 (1915); *State ex rel. Freeman* v. *Scheve*, 65 Neb. 853 (1902); *Board of Education* v. *Minor*, 23 Ohio St. Rep. 211 (1872); *State ex rel. Finger* v. *Weedman, et al.*, 226 N.W. 348; 55 So.

Dak. 343 (1929). Cf: *Donahue* v. *Richards*, 38 Me. 376 (1854); *Spiller* v. *Inhabitants of Woburn*, 94 Mass. 127 (1866); *Clithero* v. *Showalter*, 159 Wash. 519 (1930); appeal dismissed, 284 U. S. 573; *State ex rel. Dearle* v. *Frazier*, 102 Wash. 369 (1918); *Wilkerson, et al.* v. *City of Rome, et al.*, 152 Ga. 762 (1921); *Hackett* v. *Brooksville Graded School District*, 120 Ky. 608 (1905); *Billard* v. *Board of Education*, 68 Kans. 53 (1904); *Church* v. *Bullock*, 104 Tex. 1 (1908); *People* v. *Stanley*, 81 Colo. 276 (1927); *Kaplan* v. *Independent School District*, 171 Minn. 142 (1927); *Doremus* v. *Board of Education*, 5 N. J. 435, 75 A. 2nd 880 (1950); appeal dismissed, 342 U. S. 429; *Cardea* v. *Bland*, 199 Tenn. 665, 288 S.W. 2nd 718 (1956); *Chamberlin* v. *Dade County Bd. of Pub. Instruction*, 143 So. 2d 21.

This list includes most, if not all of the cases decided in the State courts, on this subject. They have been decided both ways, most of them under State constitutions. Altogether they emphasize that the use of the public schools and the compulsory education machinery for religious instruction or exercises by means of Bible reading, recitation of prayers and otherwise, has been and is the source of much bitter controversy and strife. The opinions and dissenting opinions in these cases recite the factual details and the arguments pro and con.

* Collections and discussions of these State cases, and the State statutes involved, will be found in the following: *The Legal Status of Church-State Relationships in the United States*, by Alvin W. Johnson (1934), Minnesota University Press, at pp. 190; *Church and State in the United States*, by Stokes, Vol. II, pp. 540-572, Harper Brothers, 1950; *The American Tradition in Religion and Education*, by Butts, Beacon Press, 1950, pp. 190-197; *Church, State, and Freedom*, by Pfeffer, 1953, Beacon Press, pp. 374-391, 394-399; Vol. 63, Columbia Law Review, pp. 80-7 (January 1963), article "The Supreme Court, The First Amendment, and Religion in the Public Schools".

There is no need or justification for such continued conflict in the public schools; and the First Amendment, through the Fourteenth, was designed to prevent such conflicts by separating the spheres of religious and civil authority and activity. Religion is taught, and should only be taught, in the homes, churches, and religious schools. The State, being a civil institution, should not enter into the field of religious instruction or exercises through the facilities of its public schools, which are open to and supported by persons of all varieties of religious belief and no belief.

Education of the young is vital to the world. It is accepted general knowledge that the first eight years in the life of a human being are the most impressionable and very often the seat of problems manifesting themselves in adulthood.

"Men are not born with hatred in their blood. The infection is usually acquired by contact; it may be injected deliberately or even unconsciously, by parents, or by teachers."* The divisiveness thus spawned in society and in schools, public or private, does have untold repercussions in adulthood.**

Yesterday the Jews, the day before the Catholics, tomorrow the Protestants and the day after that mankind.

*"The Foot of Pride" by Malcolm Hay, p. 3, Beacon Press 1950.

**A German general when asked at Nuremberg how the slaughter of millions of Jews could take place, replied "I am of the opinion that when for years, for decades, the doctrine is preached that Jews are not even human, such an outcome is inevitable." *Ibid* p. 3

"I am convinced" wrote Pierre van Paassen "that Hitler neither could nor would have done to the Jewish people what he has done * * * if we had not actively prepared the way for him by our own unfriendly attitude to the Jews by the selfishness and by the anti-Semitic teachings in our churches and schools." "The Forgotten Ally" by Pierre Paassen, p. 35

if the home, religious groups and religious schools do not make morality and ethics their real business, and keep religion out of the public schools.

Any contention or suggestion that the practice of morning devotionals and Bible readings in the public schools is not to be upset because it is long established and for fear of destroying the moral fiber of our society or educational system, falls before the decisions of this Court in desegregation cases and flies in the face of the great Emancipation Proclamation freeing American society from slavery. The principles of American democracy are paramount to such an emotional appeal. The world looks to this nation as a working example of the sacredness of an individual and his rights vis-a-vis government. Liberty and freedom have become synonymous with the American form of government; elsewhere in the world governments have commingled their secular activities with religion; in America the Constitution set up a wall between such activities. Whenever directly or indirectly, by argument, persuasion or any sort of legal legerdemain, attempts are made to scale this wall, the integrity of the wall must be maintained.

Conclusion

The Pennsylvania statute and the practice thereunder, and the Baltimore city rule and the practice thereunder, are both unconstitutional under the First and Fourteenth Amendments. Pennsylvania and Baltimore city are not being neutral in their relations to believers and non-believers. They have made man's relation to his God the concern of the State. They have fused spheres of religious activity and civil authority. They are utilizing the

State's tax-supported and tax-established public school system to aid faiths and are putting the momentum of their whole public school atmosphere and system behind religious instruction. They are using tax-supported property for religious instruction and exercises. They are providing pupils for religious services and exercises through use of the State's compulsory public school machinery. They are using their state power and laws to aid some religions over others. They are using taxes raised for secular public schools to support religious activities. They are commingling religious and secular instruction in the public schools.

This is not a separation of Church and State. Separation means separation, not something less. The principle should be enforced in its full integrity. These legislative acts and practices should be struck down as being in violation of these constitutional principles.

Respectfully submitted,

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